

Department of Social and Health Services

DP Code/Title: PL-ET APS Caregiver Registry

Program Level - 050 Long Term Care Services

Budget Period: 2003-05 Version: E2 050 2003-05 2004 Sup-Agency Req

Recommendation Summary Text:

This decision package requests funding for the Adult Protective Services' (APS) implementation of due process for individuals with substantiated findings of abuse, abandonment, neglect, and financial exploitation of a vulnerable adult. Statewide result number 5.

Fiscal Detail:

Operating Expenditures

	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Overall Funding			
001-1 General Fund - Basic Account-State	905,000	1,001,000	1,906,000
001-C General Fund - Basic Account-DSHS Medicaid Federa	605,000	658,000	1,263,000
Total Cost	1,510,000	1,659,000	3,169,000

Staffing

	<u>FY 1</u>	<u>FY 2</u>	<u>Annual Avg</u>
Agency FTEs	11.4	13.2	12.3

Package Description:

As of October 1, 2003, the Department of Social and Health Services (DSHS) began providing an administrative fair hearing opportunity (due process) to all individuals against whom APS has substantiated findings of abuse, abandonment, neglect and financial exploitation. Implementation of due process was a necessary pre-requisite to enable DSHS to comply with the statutory requirement (Chapter 74.39A RCW) to provide the Home Care Quality Authority (HCQA) access to the names of individuals with substantiated findings in the APS database. Sharing this information will deny the individual an opportunity for employment by precluding placement of their names' on the HCQA Caregiver Referral Registry. In January 2003, the King County Superior Court ordered DSHS to provide a fair hearing to an Individual Provider (IP) terminated from employment as a result of an APS substantiated finding. The portion of the order (S. Radermacher vs. APS/DSHS, Case No. 02-2-18240-2SEA) requiring DSHS to provide due process to all persons with substantiated findings is currently under appeal. The implementation of fair hearings reduced the risk of similar litigation by multiple organizations who had also expressed concerns (e.g., the American Civil Liberties Union, Columbia Legal Services, and Labor Unions) for the lack of due process.

APS investigators and supervisors are now required to prepare for and testify, on behalf of the department, at all of the additional fair hearing proceedings. Their participation in the administrative hearing process will decrease the amount of time available to conduct investigations and provide protective services related to newly reported allegations.

It is estimated that 563 APS investigations per year will result in numerous requests for administrative hearings. This significant increase in workload necessitates an additional 8.5 FTEs to provide the legal expertise and to provide the required coordination with witnesses and department staff for the hearings. An additional 4.2 FTEs for APS supervisory and investigative staff are needed to ensure ongoing timely responses to allegations. Additionally, the current APS database, Adult Protective Services Automated System (APSAS), is not formatted to accommodate the new due process related information and activities. The APSAS database needs updating to ensure all necessary information is properly collected and disseminated to the HCQA. To program these changes, 2.0 FTEs are needed in Fiscal Year 2004, and 0.5 FTE to provide computer support until June 30, 2005.

Narrative Justification and Impact Statement

How contributes to strategic plan:

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The Aging and Disabilities Services Administration (ADSA) Strategic Goal #3: Providing public value by strengthening the vulnerable adult protection/complaint investigation programs.

ADSA is committed to implementing strategies to improve coordination with other state agencies to enhance the protection and well-being of Washington's vulnerable adult population. Providing due process to the individual provider/perpetrator will enable ADSA to share information about APS substantiated findings with other agencies including the HCQA for use in their caregiver referral registry.

Performance Measure Detail

Program: 050

Goal: 05E Provide Public Value

No measures submitted for package

Incremental Changes

FY 1

FY 2

Goal: 06E Ensure cost effectiveness of long-term care

Efficiency Measures

3e1 Monthly average cost per long-term client.

Incremental Changes

FY 1

FY 2

15

2

Reason for change:

Funding is needed to sustain the implementation of APS due process, which began October 1, 2003.

Impact on clients and services:

Individual Providers/Perpetrators: The opportunity to request an administrative hearing ensures due process to all those individuals against whom APS has made a substantiated finding of abuse, abandonment, neglect, or financial exploitation. Medicaid-paid caregivers and others will be unemployable in the home care field if the finding is upheld.

Clients: Clients will have increased confidence in the quality of IPs listed on the HCQA caregiver referral registry. Vulnerable adults throughout the state will benefit because the Background Check Central Unit will have access to the APS, APSAS database information when conducting background checks and will identify and disqualify IPs with a history of perpetrating abuse.

Stakeholders: Organizations that hire home care workers can be assured that IPs with a substantiated history of abuse, abandonment, neglect, or financial exploitation of a vulnerable adult are not moving from one care setting to another, as the information on substantiated findings will be available to these organizations. A number of unions that represent employee who may be alleged perpetrators have expressed an interest in and should be satisfied that hearing rights are being provided to their workers.

Impact on other state programs:

The Attorney General's Office estimates a total cost of \$142,395 for an additional 0.45 FTE for the 2003-05 Biennium (Fiscal Year 2004, \$61,026, and Fiscal Year 2005, \$81,369). These costs are included in this decision package.

The DSHS Board of Appeals estimates a total cost of \$870,300 for an additional 4.0 Review Judges and 2.0 support staff for the 2003-05 Biennium (Fiscal Year 2004, \$398,400, and Fiscal Year 2005, \$471,900). These costs are included in this decision package.

The Office of Administrative Hearings estimates a total cost of \$2,108,000 for an additional 8.5 Administrative Law Judges and 4.25 support staff for the 2003-05 Biennium (Fiscal Year 2004, \$931,000, and Fiscal Year 2005, \$1,177,000). These

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costs are not included in this decision package.

Relationship to capital budget:

Not Applicable

Required changes to existing RCW, WAC, contract, or plan:

DSHS and the HCQA will need to develop Washington Administrative Code (WAC) that explains a person's administrative hearing rights and the internal review process that will occur before an administrative hearing.

Alternatives explored by agency:

Option #1: Do not provide administrative hearings to individual providers/perpetrators with substantiated findings. If the department does not provide administrative hearings to the individual providers/perpetrators with substantiated findings, the department will be at risk of being challenged in court for not providing due process to individuals denied employment and at risk of being challenged in court for not sharing information with the HCQA for use with the caregiver referral registry as required under Chapter 74.39A RCW.

Option #2: Do not make any changes to the APS database, the APSAS. If the APSAS is not updated, key information will not be gathered, nor available, to the HCQA (e.g., distinction between individual providers/perpetrators who have, and have not had, an opportunity for a fair hearing) and an efficient, accurate query method will not be developed. ADSA employees will be required to individually access the system with each provider inquiry, and then provide the information to the HCQA by phone, or by mail. This process is an ineffective use of state employee time and allows for the possibility of human error.

Option #3: Provide administrative hearings within current APS staff allotment and funding level. Without additional APS resources, tasks related to administrative hearings will preclude timely response to allegations and provision of protective services. APS would need to make significant changes to policy (e.g., lengthen response times; eliminate some investigations) to accommodate the additional hearing workload. These changes could place vulnerable adults at increased risk of harm.

Budget impacts in future biennia:

The rate of substantiation is predicted to remain at approximately 20 percent of the total number of investigated cases. However, because the number of reports received by APS continues to increase, it is projected that the number of cases resulting in substantiated findings will gradually increase, as will the corresponding number of administrative hearing requests.

Distinction between one-time and ongoing costs:

This decision package includes one-time costs for the programmers and the computer support, \$172,000 in Fiscal Year 2004 and \$40,000 in Fiscal Year 2005. Also includes other equipment costs of \$76,000 in Fiscal Year 2004. All other costs are ongoing costs; they include costs for the Legal Benefits Advisor/Attorney positions and for the APS Supervisors and Investigators. Additionally, the Attorney General's Office, the DSHS Board of Appeals, and the Office of Administrative Hearings costs will be ongoing.

Effects of non-funding:

If the department does not provide administrative hearings to individuals with APS substantiated findings, the department will be at risk of being challenged in court for not providing due process to individuals denied employment (i.e., the IPs being terminated in response to a substantiated finding), and at risk of being challenged in court for not sharing information with the HCQA for use with their Caregiver Referral Registry as required in Chapter 74.39A RCW.

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Expenditure Calculations and Assumptions:

See attachment - PL-ET APS Caregiver Registry.xls

The cost estimates for The Office of Administrative Hearings are presented on the attachment but are not included in the decision package fiscal estimates.

<u>Object Detail</u>	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Overall Funding			
A Salaries And Wages	675,000	779,000	1,454,000
B Employee Benefits	163,000	186,000	349,000
E Goods And Services	532,000	640,000	1,172,000
G Travel	12,000	14,000	26,000
J Capital Outlays	116,000	26,000	142,000
T Intra-Agency Reimbursements	12,000	14,000	26,000
Total Objects	1,510,000	1,659,000	3,169,000

DSHS Source Code Detail

Overall Funding	<u>FY 1</u>	<u>FY 2</u>	<u>Total</u>
Fund 001-1, General Fund - Basic Account-State			
<u>Sources</u> <u>Title</u>			
0011 General Fund State	905,000	1,001,000	1,906,000
Total for Fund 001-1	905,000	1,001,000	1,906,000
Fund 001-C, General Fund - Basic Account-DSHS Medicaid Federa			
<u>Sources</u> <u>Title</u>			
19UL Title XIX Admin (50%)	605,000	658,000	1,263,000
Total for Fund 001-C	605,000	658,000	1,263,000
Total Overall Funding	1,510,000	1,659,000	3,169,000